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March 5, 2003

Mr. John H. Robertus
California Regional Water Quality Control Board
San Diego Region
9174 Sky Park Court
San Diego, CA 92123

Via Facsimile and U.S. Mail
(858) 571-6972

Re: March 12, 2003 Agenda, Item 10, Revision of General Waste Discharge
Requirements for Inactive Landfills, Tentative Order Nos. R9-2003-0001
& R9-2003-0002, Comments Submitted by the County of San Diego

Dear Mr. Robertus:

As you know, the RWQCB issued revised Tentative Order Nos. R9-2003-0001 & R9-2003-0002 on January 27, 2003 and requested written comments by February 26, 2003. After meeting with members of your staff to discuss concerns regarding portions of the Tentative Orders, the County of San Diego ("County") submitted written comments to the RWQCB on February 24, 2003.

As of this writing, we have not been informed as to whether your staff intends to modify the Tentative Orders based upon the comments submitted by the County and other impacted entities. In the event the Tentative Orders are modified, the County requests a reasonable amount of time (30 days) to consider modifications to the Orders before they are presented to the RWQCB for adoption.

In the event your staff decides not to modify the Tentative Orders to address the comments submitted by the County and other impacted entities, please take note that the County intends to submit oral testimony during the March 12, 2003 hearing objecting to adoption of the Orders.

At the suggestion of your staff, the comments were sent in electronic version to Mr. Odermatt on February 24, 2003. In order to comply with your Board rules the County will be delivering 20 hard copies of each set of comments (one set of 20 copies for 0001 and one set of 20 copies for 0002) to your offices today.

The County's oral testimony will be based upon the written comments previously submitted to Mr. Odermatt on February 24, 2003. The County will also present testimony regarding the following procedural concerns:

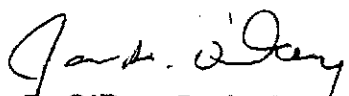
Compliance with Government Code Section 13340 - "Underground Regulations"

As addressed in the County's specific written comments submitted on February 24, 2003, above, Tentative Order Nos. R9-2003-0001 and 2003-0002 conflict with several Title 27 provisions. As you are aware, Title 27 was enacted to provide consolidated regulations for solid waste landfills. It includes regulations promulgated by the State Water Resources Control Board and the California Integrated Waste Management Board ("CIWMB"). Therefore, the County encourages the RWQCB to consult with and coordinate all de facto amendments to Title 27 with the CIWMB before the Tentative Orders are adopted.

Because the Tentative Orders impose new more stringent regulations for a large number of the inactive landfills and burn sites in the San Diego Region, they may also constitute "underground regulations" that may not be adopted without following the procedures set forth in the Administrative Procedure Act as required by the California Government Code. (See Gov. Code § 11340 et seq., 11370; see also, State Water Resources Control Board v. Office of Administrative Law (1993) 12 Cal.App. 4th 697.)

Very truly yours,

JOHN J. SANSONE, County Counsel

By 
James R. O'Day, Senior Deputy

JRO:
02-01964